UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUNTER SITE SERVICES, L.L.C.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. ___________________
	§	
INVISTA S.à r.l.,	§	
	§	
Defendant.	§	

ORIGINAL COMPLAINT

Plaintiff Hunter Site Services, L.L.C. ("Hunter Site Services"), files this original complaint against Defendant INVISTA S.à r.l. (Invista) for damages arising from Invista's failure to pay for all the valuable labor, equipment, and materials provided and paid for by Hunter Site Services to Invista.

I.
PARTIES

1. Hunter Site Services is a limited liability company organized and existing under the laws of the State of Texas with a principal place of business in Houston, Texas.

2. Invista S.à r.l. is a limited liability corporate entity organized under the laws of Luxembourg, with its principal place of business in Wichita, Kansas. Invista is a citizen of Kansas and Luxembourg within the meaning and intent of 28 U.S.C. § 1332. Invista is registered to do business and regularly conducts business in Texas. Accordingly, Invista may be served

with process via its registered agent for service in Texas: CT Corporation System, 350 N. Saint Paul Street, Suite 2900, Dallas, Texas 75201.

II.
JURISDICTION AND VENUE

3. The Court has personal jurisdiction, specific and general, over Invista in this action because a substantial part of the events or omissions giving rise to the claim occurred in the State of Texas and Invista has engaged in "continuous and systematic" activities with the State of Texas, including the Southern District of Texas, as evidenced by its various manufacturing facilities located in La Porte, Orange, and Victoria, an administrative office located in Houston and the negotiations and execution of the agreements at issue in Houston, Texas.

4. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different States.

5. Invista owes Hunter Site Services at least $1,168,485.26 for labor, services, equipment and materials furnished by Hunter Site Services. Hunter has sustained actual damages in excess of $1,168,485.26.

6. All the members of Hunter Site Services are citizens of Texas.

7. Invista is designated as a "S.à r.l." The designation S.à r.l. is a European designation comparable to the "LLC" designation used in the United States. At the initiation of this case, there are three managers of Invista: Craig Munson, a natural person who is a citizen of Kansas; Jay Voncannon, a natural person who is a citizen of Kansas; and Marcel Stephany, a natural person who is a citizen of Luxembourg, Grand Duchy of Luxembourg. For purposes of diversity jurisdiction, Invista is a citizen of Luxembourg and Kansas.

8. There is, therefore, complete diversity to support federal jurisdiction.

9. Venue is proper in the Court under 28 U.S.C. § 1391(b)(2)-(3), (d) because: (1) "a substantial part of the events or omissions giving rise to the claim occurred" in this judicial district; and (2) alternatively, Invista is otherwise subject to the Court's personal jurisdiction with respect to this action.

III.
FACTS

A. Invista refuses to pay Hunter Site Services for all the labor, equipment, and materials furnished as part of the civil engineering, civil site work, and installation of three blast resistant buildings, ADN building, HMD building, the AA C-12 building, located at Invista's plant in Victoria, Texas.

10. Hunter Buildings & Manufacturing, L.P., (Hunter Buildings) designs and manufactures blast-resistant modular buildings (BRM) for clients across the globe.

11. Hunter Site Services provides on-site engineering, re-engineering, construction, field assembly, installation, training, inspection, and maintenance services to clients who have purchased a BRM from Hunter Buildings.

12. Invista is one of the largest integrated fibers and polymers businesses in the world.

13. Invista's plant in Victoria, Texas, manufactures nylon intermediate chemicals for use in the production of Invista products such as Stainmaster carpet, Antron carpet fiber, Cordura fabric and Lycra spandex.

14. On or about November 3, 2009, Hunter Site Services entered into a Master Service Agreement, A00334-SV, with Invista (the "Service Agreement"). A duplicate of the Service Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

15. Terms of the Service Agreement in relevant part provide the following:

INVISTA may from time to time in the future desire Contractor [Hunter Site Services], as an independent contractor, to perform certain work or services for INVISTA and/or supply certain equipment or materials to INVISTA (collectively, "Work").

1. BILLING AND PAYMENT

(b.) Contractor shall submit to INVISTA's authorized representatives an itemized statement detailing charges for labor and equipment including hours, dates, the hourly charge for the labor or equipment and any charge for materials at the end of each month during which Work is performed. Contractor shall furnish upon request any records relating to the statement prior to or after payment by INVISTA. (c.) Payment shall be made within ~~sixty (60)~~ thirty (30) days of INVISTA's receipt of the statement described in Subparagraph 1(b) of this Agreement. INVISTA reserves the right to withhold payment until completion of the Work and its acceptance by INVISTA or until Contractor furnishes proof satisfactory to INVISTA that all bills for materials and labor covering the Work have been fully paid by Contractor, and that the premises upon which the Work is done and any structures built, improved or added to are not subject to any material or labor liens or claims of liens. Contractor and/or any subcontractor shall promptly and satisfactorily settle all liens and claims for labor performed and supplies or material furnished in connection with the Work.

3. TERM. This Agreement shall be effective as of the date first written above, and shall continue in effect thereafter until terminated by either party upon 30 days advance written notice to the other party.

4. ASSIGNMENT; SUBCONTRACTORS; AMENDMENTS; ENTIRE AGREEMENT. ...Work under this Agreement [shall not] be assigned to a subcontractor without the prior written consent of INVISTA...

Exhibit 1, Service Agreement, p. 1.

16. On or before July 8, 2013, Jim Weaver, A.I.A., Vice President of Architecture for Burrow Global, contacted Hunter Buildings on behalf of Invista with a request for proposal for the design and construction of three BRMs (hereinafter referred to as the "ADN" building, the "HMD" building, and the "AA[1] C-12" building) to be installed at Invista's Victoria, Texas, plant (the "Victoria Site").

17. The ADN building is also known as building "1402". The HMD building is also known as building "1403". The AA C-12 building is also known as building "1404".

18. Weaver's original request for proposal to Hunter Buildings did not include a request for proposal to Hunter Site Services because, on information and belief, Burrow Global was, initially, going to perform the installation work relating to the three BRMs at the Victoria Site.

19. Stephanie Wilder, an employee of Hunter Buildings, responded to Weaver's request for proposal and forwarded Hunter Buildings's proposals for the three BRMs on July 8, 2013. A duplicate of Wilder's July 8, 2013 e-mail is attached hereto as Exhibit 2 and incorporated herein by reference.

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[1] "AA" is short for Adipec Acid.

20. On July 16, 2013, at 7:50 a.m., Weaver sent an e-mail to Wilder (the "7-16-13 Weaver E-mail") explaining that Invista "have asked for an installed price...", "contact Chris [Griffith at Burrow Global] or whomever you want to use to provide the foundation, set the units, and make all installation arrangements" and "[a]ssume Invista will bring utilities to the units." A duplicate of the 7-16-13 Weaver E-mail is attached hereto as Exhibit 3 and incorporated herein by reference.

21. On July 16, 2013, Yvonne Rieger, an employee of Invista, sent an e-mail (the "7-16-13 Rieger E-mail") to Wilder stating the following:

> I am the project manager for this project and I've been working with Jim Weaver at BG on this.
>
> In addition to the proposals you provided, please provide:
>
> * * *
>
> A separate quote for site services and warranty terms...
>
> Please send quotes to our procurement manager Angela Hernandez also
> ...

A duplicate of the 7-16-13 Rieger E-mail is attached hereto as Exhibit 4 and incorporated herein by reference.

22. On July 24, 2013, Rieger sent an e-mail to Wilder forwarding detailed comments and modifications—down to the nuts and bolts—that applied to all three BRMs and a request for a revised proposal (the "7-24-13

E-mail"). A duplicate of the 7-24-13 E-mail is attached hereto as Exhibit 5 and incorporated herein by reference.

23. On July 30, 2013, Jeff Stelzer, and employee of Hunter Site Services, forwarded to Hunter Buildings separate proposals for the ADN, HMD, and AA C-12 buildings (collectively, the "7-30-13 Proposals") that included separate pricing for Hunter Site Services' installation and commissioning work and separate pricing for site civil work and engineering, *i.e.* the foundation work, with respect to each BRM. Duplicates of the transmitting e-mails and the 7-30-13 Proposals are attached hereto as Exhibit 6 and are incorporated herein by reference.

24. Between the time Stelzer quoted the July 30, 2013 Proposals and August 1, 2013, Invista's Rieger notified Hunter Buildings that there had been a change of mind regarding the layout of the BRMs relating to canopies.

25. On or about August 1, 2013, Stephanie Wilder of Hunter Buildings forwarded Hunter Site Services's July 30, 2013 proposals with cosmetic changes to Invista's Yvonne Rieger. Duplicates of the 7-30-13 Proposals forwarded to Invista are attached hereto as Exhibit 7 and are incorporated herein by reference.

26. Between July 30, 2013 and August 9, 2013, Invista's Rieger also changed her mind regarding the scope of Hunter Site Services's work relating to the Victoria Site project opting to exclude civil site and engineering work

from Hunter Site Services's proposal and opting instead to include site visits, assistance with civil engineering for the foundations, canopy installations, and Riglets and Flashing as required.

27. On August 9, 2013, at 1:36 p.m., Stelzer sent an e-mail to Invista's Rieger confirming the inclusion of site visits, assistance with civil engineering for the foundations, canopy installations, and Riglets and Flashing as required and forwarding Hunter Site Services's third revised proposals for the installation and commissioning of the ADN Building, the HMD Building, and the AA C-12 Building (collectively, the "Revised Proposals"). Duplicates of Stelzer's August 9, 2013 e-mail to Rieger and attached Revised Proposals are attached hereto as Exhibit 8 and are incorporated herein by reference.

28. Notably, the Revised Proposals no longer included civil work in the scope of work and no longer included a bid for civil work relating to the three BRMs. *See* Exhibit 8, pp. 3, 8, and 14.

29. At 2:03 p.m., Invista's Rieger responded to Stelzer by e-mail asking Stelzer to "revise the date of the [8-9-13 Proposals] to avoid any confusion from our procurement." A duplicate of Rieger's e-mail is attached hereto as Exhibit 9 and incorporated herein by reference.

30. At 2:53 p.m. on the same day, Invista's Rieger sent an e-mail to Benjamin Silewicz, a Hunter Buildings' employee, advising that she "received

the revised installation from Jeff [Stelzer], looks good." A duplicate of Rieger's e-mail is attached hereto as Exhibit 10 and incorporated herein by reference.

31. At 3:17 p.m., Stelzer e-mailed the fourth revised and final Hunter Site Services proposals (the "Installation Proposals") to Invista's Rieger that are identical to the Revised Proposals except the date located in the upper, left corner on the first page of each proposal was changed to "August 9, 2013" and the footer on each page reflected "Rev 4". Duplicates of Stelzer's 3:17 p.m. e-mail to Rieger and the Installation Proposals are attached hereto as Exhibit 11 and incorporated herein by reference.

32. On August 26, 2013, Angelica Hernandez, Invista's Project Procurement Manager, e-mailed a purchase order, PO 3801192638, dated August 24, 2013 to Hunter Buildings for Hunter Site Services's installation of the HMD building, the AA C12 building, and the ADN building at the Victoria Site (hereinafter referred to as "Installation PO"). Duplicates of Angelica Hernandez's e-mail and the Installation PO are attached hereto as Exhibit 12 and incorporated herein by reference.

33. The Installation PO identifies "Hunter Site Services LLC, 14935 Jacinto Port Boulevard, Houston, Texas 77015" as the vendor. Exhibit 12, p. 1.

34. The Installation PO provides that it is subject to the Terms and Conditions of the Service Agreement. Exhibit 12, p. 3.

35. The Installation PO identifies Invista's Rieger as a Project Manager and Invista's Angelica Hernandez as Commercial Contact. *Id.*

36. According to the Installation PO, Invista agreed to pay Hunter Site Services the following amounts that are consistent with the amounts reflected in the Final Proposals:

- 40% or $50,428.80 upon receipt of the purchase order for the installation of the HMD building;
- 60% or $75,643.20 upon completion of the HMD building install;
- 40% or $60,628.80 upon receipt of the purchase order for the installation of the AA C-12 building;
- 60% or $90,943.20 upon completion of the AA C-12 building install;
- 40% or $60,628.80 upon receipt of the purchase order for the installation of the ADN building;
- 60% or $90,943.20 upon completion of the ADN building install;
- $19,600.00 for a protective roof membrane on the HMD building;
- $23,600.00 for a protective roof membrane on the AA C-12 building; and
- $23,600.00 for a protective roof membrane on the ADN building.

See Exhibit 12, pp. 6-11.

37. The Installation PO called for a December 2, 2014 [sic] (should be 2013) installation date for the ADN building and a January 1, 2014 installation date for the HMD and AA C-12 buildings. *Id.* at pp. 6-9.

38. The Victoria Site however required a significant amount of engineering and civil site work before Hunter Site Services could install and commission the three BRMs.

39. Invista chose to go with two, unrelated civil engineering firms, Sigma Engineers and Mustang Engineering, to design the sites for the ADN, HMD, and AA C-12 buildings. Invista also engaged a separate construction firm named, on information and belief, REXCO to perform the civil site work. The engineering firms and the construction firm engaged by Invista were not (and are not) affiliated with Hunter Site Services.

40. Shortly before the civil work was set to begin, Invista's original construction firm withdrew from the Victoria Site project. This withdrawal prompted Invista to request a proposal from Hunter Site Services for the civil site work.

41. On October 14, 2013, Invista's Rieger e-mailed nine pages of foundation design drawings (the "Bid Drawings") to Hunter Site Services to be used and relied on when formulating a proposal for the ADN, HMB, and AA C-12 civil foundation work at the Victoria Site. Duplicates of the Bid

Drawings are attached hereto as Exhibit 13 and are incorporated herein by reference.

42. On short notice, Hunter Site Services rearranged and moved many projects, equipment, supervisors, and labor to accommodate Invista's short fused and time sensitive schedule.

43. Due to the magnitude of the Victoria Site civil work, Hunter Site Services also sub-contracted out a portion of the civil work to SMW Projects, Inc., (SMWP) which Invista approved.

44. Hunter Site Services relayed the Bid Drawings to SMWP for a quotation on the civil foundation work aspect of the Victoria Site project.

45. On October 24, 2013, SMWP submitted a proposal dated October 22, 2013 (the "10-24-13 SMWP Proposal") to Hunter Site Services for the "installation of the three (3) building slab foundations 'only' according to the documentation provided by [Hunter Site Services] for BRMs 1402, 1403 & 1404."

46. Hunter Site Services incorporated SMWP's 10-24-13 Proposal into Hunter Site Services's bid for the civil site work relating to the ADN, HMD, and AA C-12 buildings and submitted their proposal dated October 28, 2013 (the "Civil Work Proposal") on or about October 29, 2013. A duplicate of the Civil Work Proposal is attached hereto as Exhibit 14 and incorporated herein by reference.

47. The pricing for the site civil work proposed by Hunter Site Services was $997,365.00, which included additional services for the demolition of the AA C-12 building at a price of $265,000.00. Exhibit 14, p. 3.

48. The Civil Work Proposal submitted by Hunter Site Services defined the lump sum scope of civil work according to the following terms:

- Demo and disposal of the existing C-12 building and perimeter paving.
- Installation of the three (3) building slab foundations according to the documentation provided by Invista for BRMs 1402, 1403 & 1404.
- Our proposal includes; C-12 Demo including electrical demo and removal of the C-12 concrete perimeter, excavation of topsoil and soils for beams, mud seal, (not "bath tub" entire area), backfill, installation of foundations, rebar installation, imbed installation and concrete installation according to the documentation provided by Invista.
- We have included only materials specified in the documents provided by Invista.
- Additional work not specified in the scope of work or drawings provided shall be completed at additional cost.
- Any site delays or work stoppages to the project shall be handled as additional cost handled on a time and materials basis.
- Any underground obstructions not shown and identified on drawings will be considered additional cost and handled on a time and materials basis.
- Upon completion of each project, HSS will provide all documentation and inspection reports as required.

Exhibit 14, p. 1.

49. Hunter Site Services further clarified the lump sum scope of civil work under the "Clarifications" section:

- … HSS not responsible for shutdowns due to discovery of contaminated soils or materials.
- Pricing excludes any allowance for upset operating conditions and/or other factors that prevent and/or restrict HSS's access to the work described.
- This Proposal is based on HSS and client entering into a mutually agreeable contract.
- Proposal clarifications to become part of contract upon award.
- HSS's proposal is based on current market conditions.
- Pricing is based on a complete order as stated. Additions or deletions will be priced separately.
- Should the project not be scheduled for execution upon receipt of contract, pricing will be reevaluated at the time of requested mobilization or authorization to proceed. Any adjustments in labor, materials and other surcharges from our vendors will be at the owner's expense.
- HSS's bid is based on one mobilization/demobilization with continuous working activities throughout the course of the project. Any delays due to plant production requirements, their Contractors, or availability of Invista furnished equipment or materials will be at Invista's expense.
- … any work stoppage or delay outside of HSS's control such as fires, spills or other causes shall be considered extra to our proposal.
- Since HSS has not performed the engineering or design services, our proposal excludes the suitability of the design, performance, or any criteria other than providing materials

> or workmanship in accordance with the building slab/soil engineering package.

Exhibit 14, pp. 2-3.

50. Invista accepted the Civil Work Proposal and e-mailed a purchase order, PO# 3801219503, dated October 31, 2013 to Stelzer at Hunter Site Services on November 1, 2013 (the "Civil PO"). A duplicate of the Civil PO is attached hereto as Exhibit 15 and incorporated herein by reference.

51. Between November 7, 2013 and November 8, 2013, (six to seven days after Invista issued the Civil PO), Invista transmitted 266 pages of construction release documents to Hunter Site Services (the "Construction Release Packages").

52. The Construction Release Packages included drawings, specifications, and designs for civil work relating to ramps, handrails, platforms, landings, stairs, paving, parking spaces, ADA requirements, grading, excavation, concrete and numerous other items for the ADN, HMD, and AA C-12 buildings that were wholly unrelated to the Bid Drawings and outside the scope of work defined in the Civil Work Proposal.

53. Duplicates of documents, drawings, and specifications included in the Construction Release Packages as part of T.L. # T002_CSA_CR_13NOV07 are attached hereto as Exhibit 16 and are

incorporated herein by reference as examples of the expanded or new scope of work outside the Civil Work Proposal.

54. Although the drawings included in the Construction Release Packages are dated prior to the date Hunter Site Services submitted its Civil Work Proposal (some drawings, plans, specifications are dated years before), Invista only provided the documents to Hunter Site Services *after* Hunter Site Services submitted a proposal based on the Bid Drawings and *after* Invista issued the Civil PO. *See* Exhibits 13, 14, 15, and 16.

55. Invista engaged Hunter Site Services to perform the additional work in connection with the Construction Release Packages, which additional work presented a different, expanded or new scope of work that fell outside the scope of work defined in the Civil Work Proposal, and Hunter Site Services performed the work.

56. Hunter Site Services billed the additional work, outside-the-scope work, and new scope of work associated with the Construction Release Packages to Invista in accordance with the Service Agreement and the Civil Work Proposal. *See* Exhibit 1, Service Agreement, p. 1; *see* Exhibit 14, Civil Work Proposal.

57. At the same time Invista was transmitting its "construction release" documents, Invista was already in the process of redesigning the

ADN, HMD, and AA C-12 foundations. *See* Exhibit 17 attached hereto and incorporated herein by reference.

58. On or about November 11, 2013, Invista forwarded Issued for Construction (IFC) drawings to Hunter Site Services that represented changes to the design of the ADN, HMD, and AA C-12 foundations (the "IFC Drawings") that differed from the Bid Drawings. Once again, Invista provided the IFC Drawings to Hunter Site Services *after* Hunter Site Services submitted its proposal based on the materials previously furnished by Invista and *after* Invista issued the purchase order. Duplicates of the IFC Drawings are attached hereto as Exhibit 18 and are incorporated herein by reference.

59. The IFC Drawings changed the spread footings to large cylindrical concrete piers on all three BRMs and changed the slab reinforcing to welded wire fabric on the ADN building. Exhibit 18, pp. 2, 3, 5, and 8.

60. Invista engaged Hunter Site Services to install the ADN, HMD, and AA C-12 in accordance with the IFC Drawings, and Hunter Site Services performed the work.

61. The IFC Drawings represented a change order from the Bid Drawings, and the additional labor, services, equipment, or materials required to affect the changes defined in the IFC Drawings were billed to Invista in accordance with the Service Agreement and the Civil Work

Proposal. *See* Exhibit 1, Service Agreement, p. 1; *see* Exhibit 14, Civil Work Proposal.

62. On or about November 20, 2013, Sigma issued new drawings on behalf of Invista that reflected additional, changes to the design of the ADN foundation (the "Final ADN Foundation Drawings"). The Final ADN Foundation Drawings are attached hereto as Exhibit 19 and are incorporated herein by reference.

63. On or about December 13, 2013, Invista generated FCO 0008 (hereinafter referred to as "FCO 8") for the additional work on the ADN foundation resulting from the design change to the Final ADN Foundation Drawings. A duplicate of FCO 8 is attached hereto as Exhibit 20 and is incorporated herein by reference.

64. Invista engaged Hunter Site Services to perform the additional work under FCO 8, and Hunter Site Services performed the work.

65. Invista's new design for the ADN foundation once again departed from the drawings provided to Hunter Site Services to formulate its bid and required, among other items, the excavation of four feet, four inches of soil, a five foot high foundation wall, and backfill of thousands of cubic yards of select fill soil. Duplicate of pictures showing the four feet of excavation, five foot high foundation wall, and backfill are attached hereto as Exhibit 21 and are incorporated herein by reference.

66. The Final ADN Foundation Drawings represented a change order from the Bid Drawings, and the additional labor, services, equipment, or materials required to affect the changes required by the Final ADN Foundation Drawings were billed to Invista in accordance with the Service Agreement and the Civil Work Proposal. *See* Exhibit 1, Service Agreement, p. 1; *see* Exhibit 14, Civil Work Proposal.

67. Well into Hunter Site Services's civil work at the Victoria Site, Invista was not finished making changes. To reduce Invista's costs, SMWP proposed a new design plan for the ADN building that, among other things, utilized less concrete and more steel with respect to, for example, the ramps and landings (the "Cost Savings Estimate and Final ADN Plans"). Duplicates of the Cost Savings Estimate and Final ADN Plans are attached hereto as Exhibit 22 and are incorporated herein by reference.

68. Invista accepted the Final ADN Plans, engaged Hunter Site Services to perform the work according to the Final ADN Plans, and Hunter Site Services performed the work.

69. Athough the Final ADN Plans saved Invista money, the Final ADN Plans departed from the drawings used by Hunter Site Services to formulate its bid by, for example and in part, enlarging the site, adding ADA ramps, landings, and handrails, and adding excavation, backfill, and

compacting work. *See* Exhibit 22, Cost Savings Estimate and Final ADN Plans; *see* Exhibit 13, Bid Drawings.

70. The Final ADN Plans represented a change order from the Bid Drawings, and the additional labor, services, equipment, or materials required to affect the changes required by the Final ADN Plans were billed to Invista in accordance with the Service Agreement and the Civil Work Proposal. *See* Exhibit 1, Service Agreement, p. 1; *see* Exhibit 14, Civil Work Proposal.

71. Hunter Site Services provided the labor, services, equipment, and material for the different, expanded or new scope of work on the ADN, HMD, and AA C-12 buildings that fell outside the scope of work of the Civil PO, and Invista was subject to additional charges in accordance with the Service Agreement and the Civil Work Proposal. Exhibit 1, Service Agreement, p. 1; Exhibit 14, Civil Work Proposal.

72. From the outset, Invista's poor project management caused unplanned delays, field change orders, scope of work changes or additions, new scopes of work, design modifications, layout modifications and changes that greatly impacted and substantially changed Hunter Site Services's work on the ADN, HMD, and AA C-12 buildings. Hunter Site Services billed Invista for the different, expanded and new scope of work beyond the Civil Work Proposal.

73. Invista has refused to pay Hunter Site Services at least $930,865.53 for different, expanded and new scope of work beyond the Civil Work Proposal on the ADN, HMD, and AA C-12 buildings and described in the invoices as follows:

- C-12 – painted exterior walls on control room and painted ADA items;
- broke/drilled/chipped concrete and excavated for bollards between 2-10-14 to 2-16-14;
- EPC for ADA compliant handrail, ramp, stairs and landings;
- C-12 – broke out concrete; sawed and cut for bollards; demoed slab east side of C-12;
- ADN stoops and landings – excavated for slabs; tied rebar and filled dirt; drilled holes for piers and bollards; set caissons and forms;
- set sonotube for piers; poured pier caps; wrecked forms and installed dowel pins; built and placed forms for slab and area paving; set and poured bollards and caissons; placed piers and forms;
- HMD stoops and Landings – excavated and built forms;
- ADN – built and placed forms for area and paving; poured concrete for area; sawed, cut, cleaned up; built and placed forms for parking;
- HMD – built and placed forms for landings, ramps, sidewalks; poured landing, ramps and sidewalks; wrecked forms, landings, and ramps; formed and poured area paving; and excavated east side;

- C-12 – backfilled and compacted on west side of the building; built forms for HVAC slab and landing; built forms for HVAC and ramp;

- HMD – compacted and backfilled ADA parking area; tied rebar, backfilled and compacted for parking; wrecked forms, graded dirt and grout; performed grout work for grading;

- ADN – caulked and cleaned slab; excavated for ADA parking; backfilled and compacted dirt; built and placed forms for ADA parking; built and placed forms relating to remediated wet fill dirt; tied rebar; and reworked ADA forms and re-compacted dry dirt;

- travel time for painters; materials purchases; painting of control rooms; and painting of ADA items;

- C-12 – poured landing and HVAC slab; built and placed forms for slab; poured area paving on the east and west sides of the building; wrecked forms; built and placed forms for ramps; prepped area paving; and built and placed forms for landing; and installed rebar;

- HMD – relocated bollards and reset caulk on bollards; rained out; cleaned up and poured remaining bollards base; painted bollards and cleaned up;

- C-12 – excavated, pumped water, and set bollards; rained out; poured ramps; poured bollards; painted bollards and prepped area for concrete pour;

- ADN – excavated and set bollards; cleaned up and graded area; rained out; poured ADA slab; and poured bollards;

- C-12 – poured final concrete slab; placed and drilled holes for install of handrails;

- HMD – placed and drilled holes for install of handrails; installed handrails;

- ADN – placed and drilled holes for install of handrails and ramps; unloaded handrails and ramps;

- work and materials relating to structural steel for the hand rails and ramps for all three buildings; and

- C-12 – placed and drilled holes for the install of handrails; coated the roof with Elastikote; and installed handicap signage.

74. Hunter Site Services has paid in full all subcontractors, including SMWP for all SMWP's subcontracted civil work relating to the ADN, HMD, and AA C-12 buildings.

75. Had Invista provided at the outset all the drawings necessary to formulate a proposal for all work Invista actually desired and required, Hunter Site Services's pricing reflected in the Civil Work Proposal would have been significantly greater.

76. In addition and for the same reasons as stated above, Invista has failed to pay Hunter Site Services at least $13,003.69 for different, expanded and new scope of work beyond the Installation PO on the ADN, HMD, and AA C-12 buildings and described in the invoices as follows:

- downtime and delay due to ERB lay out and hydro-excavation not complete per FCO6 between 11-18-13 to 11-23-13;

- hydro-excavation and ERB per FCO #10; and

- wait time relating to hydro-excavation and ERB FCO #10.

B. Invista refuses to pay Hunter Site Services for all the labor, equipment, and materials provided as part of the refurbishment of another blast resistant building, B531, which is also located at Invista's Victoria, Texas, plant.

77. Hunter Buildings delivered the new ADN, HMD, and AA C-12 buildings to the Victoria Site on schedule in January 2014.

78. When Invista's employees saw the new BRMs, Invista's employees were envious and asked that Invista rehabilitate another building located on the Victoria Site, building 531 (hereinafter referred to as "B531").

79. On or before January 10, 2014, Invista contacted Hunter Site Services for a proposal to remodel B531 in accordance with items shown and described by Burrow Global Services in plans dated January 2, 2014 (the "B531 Burrow Global Plans"). A duplicate of the B531 Burrow Global Plans is attached hereto as Exhibit 23 and incorporated herein by reference.

80. In response to Invista's request concerning the B531 remodel project, Mitch Singleton at Hunter Site Services e-mailed a budgetary quote to Invista's Rieger on January 13, 2014 (the "B531 Budget"). Duplicates of Mitch Singleton's e-mail and the B531 Budget are attached hereto as Exhibit 24 and are incorporated herein by reference.

81. The B531 Budget outlined the following scope of work for Invista to consider:

Inclusions and Exclusions

Division 1	Included	
Division 2	Excluded	Ramps and Entrances Only
Division 3	Excluded	None Shown
Division 4	Included	Wall Infill
Division 5	Excluded	Angle Only
Division 6	Included	
Division 7	Included	No Roofing (Not Shown)
Division 8	Included	
Division 9	Included	
Division 10	Included	
Division 11	Excluded	
Division 12	Excluded	
Division 13	Excluded	
Division 14	Not Identified	

We have included only materials specified in the documents provided by Invista.

4. Additional work not specified in the scope of work or drawings provided shall be completed at additional cost.

6. Any site delays or work stoppages to the project shall be handled as additional cost handled on a time and materials basis.

7. Any underground items not shown and identified on drawings provided will be considered additional cost and handled on a time and materials basis.

Exhibit 24, B531 Budget, pp. 1-2.

82. Hunter Site Services proposed a price of $416,000.00 for the scope of work defined in the B531 Budget. Exhibit 24, p. 4.

83. Between January 13, 2014 and January 19, 2014, Invista's Rieger negotiated with Stelzer over the inclusions, exclusions, and scope of Hunter Site Services's proposal for B531.

84. On January 19, 2014, Stelzer issued and e-mailed a revised proposal of even date to Invista's Rieger (the "Rev 2 B531 Proposal"). Duplicate of the transmitting e-mail and the Rev 2 B531 Proposal are attached hereto as Exhibit 25 and is incorporated herein by reference.

85. Rieger's requested changes resulted in the inclusion of certain, specific work under divisions previously excluded from the scope of work defined in the B531 Budget or the revision or further delineation of included work as follows:

Inclusions and Exclusions

Division 3 Concrete Excluded

1. Work Saw cut existing concrete floor for at three locations for addition of Power and Data boxes

2. ADA Ramps and Entrances Only

Division 4 Masonry Included

1. Wall Infill for partition walls

Division 5 Metal Included

1. Bracing of interior walls to red iron steel in roofing.

Division 6 Wood and Plastic Included

Division 7 Thermal and Moisture Protection Included

1. Batt type insulation

2. No Roofing (Not Shown)

Division 8 Doors and Windows Included

Division 9 Finishes Included

Division 10 Specialties Included

1. All interior finishes specified and shown on drawings (e.g. plumbing fixtures, equipment and materials, electrical fixtures and outlets, ceiling and floor tiles, walls, paint, insulation, Kitchen cabinets, counters and sinks INCL, Operator Area cabinets and counters INC, etc. to match Hunter Buildings provided BRB FRC's at ADN, HMD and AA/C12.

Any additional materials or equipment not including in the scope to be approved prior to purchase.

Division 11 Equipment Excluded

1. All equipment to be provided by Invista Corp.

Division 12 Furnishings Included

1. Built in work station counters Included

2. Kitchen / Break Room cabinets Included

Division 13 Special Construction Excluded

Division 14 Not Identified

We have included only materials specified in the documents provided by Invista.

Rev 2 Adders:

- ✓ Design, Purchase, Fabricate, and Install Countertops to Match HBM buildings.
- ✓ Design, Purchase, and Install Fire Alarm System to Match HBM buildings.
- ✓ Design, Purchase, Fabricate, and Install Cabinet Bases to Match HBM buildings.
- ✓ Ship Materials to Victoria Texas once fabricated.

Exhibit 25 Rev 2 B531 Proposal, pp. 1-2.

86. As in Hunter Site Services's previous proposals, the Rev 2 B531 Proposal included, among other terms, the following terms:

- Additional work not specified in the scope of work or drawings provided shall be completed at additional cost based on time and materials with prior approval.

- Any site delays or work stoppages to the project shall be handled as additional cost handled on a time and materials basis.

- Any underground items not shown and identified on drawings provided will be considered additional cost and handled on a time and materials basis.

- This project will take approximately 32 shifts to complete weather permitting.

Clarifications

- Client to provide clear and unobstructed access to the work site.

- Client to provide hazardous material handling. HSS not responsible for shutdowns due to discovery of contaminated soils or materials.

- Pricing excludes any allowance for upset operating conditions and/or other factors that prevent and/or restrict HSS's access to the work described.

- This Proposal is based on HSS and client entering into a mutually agreeable contract.

- Proposal clarifications to become part of contract upon award.

- 32 working shifts in field and 5 shifts in fabrication are required to complete the job based on normal working conditions.

- ... Any adjustments in labor, materials and other surcharges from our vendors will be at Invista's expense.

- The timing, sequencing, methods and techniques used in the performance of the work will be determined by HSS, except where specifically indicated in the information furnished. HSS's sequencing, methods and techniques will act in accordance within the constraints and limitations specified by Invista.

- HSS's bid is based on one mobilization/demobilization with continuous working activities throughout the course of the project. Any delays due to plant production requirements, their Contractors, or availability of Invista furnished equipment or materials will be at Invista's expense.

- While HSS will do its utmost to cooperate with other work being performed and the operation of the facilities, any work stoppage or delay outside of HSS's control such as fires, spills or other causes shall be considered extra to our proposal.

- Since HSS has not performed the engineering or design services, our proposal excludes the suitability of the design, performance, or any criteria other than providing materials and workmanship in accordance with the building engineering package.

Exhibit 25, pp. 2-4.

87. Hunter Site Services proposed a price of $416,000.00 for the scope of work previously defined in the B531 Budget plus an additional $42,200.00 for the additional work requested by Invista's Rieger. Exhibit 25, p. 4.

88. On January 27, 2014, Invista transmitted a purchase order, PO 3801250161, to Hunter Site Services incorporating the Rev 2 B531 Proposal terms (the "B531 PO") and the Service Agreement. A duplicate of the B531 PO is attached hereto as Exhibit 26 and is incorporated herein by reference.

89. Like Hunter Site Services's experience on the work for the project relating to the ADN, HMD, and AA C-12 buildings, Invista greatly impacted and substantially changed Hunter Site Services's work on the B531 project due to Invista's poor project management[2], unplanned delays, field change orders, scope of work changes or additions, new scopes of work, design modifications, layout modifications and changes, and interior finish modifications.

90. Invista's poor project management and planning resulted in significant, additional work by Hunter Site Services for which Hunter Site Services billed to Invista in accordance with the terms of the Service Agreement and the Rev 2 B531 Proposal.

91. Invista has refused to pay Hunter Site Services at least $224,616.04 for different, expanded and new scope of work on B531 and described on the invoices as follows:

- changed rubber floor tile to ceramic floor tile and changed VCG on walls to Ceramic tile up 48";

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[2] As one of many examples of poor project management, Invista's Rieger walked through B531 on one occasion and asked the personnel working in the building to move the toilet to another area of B531. The toilet and plumbing were moved according to Rieger's request. During a subsequent visit to B531, Invista's Rieger asked the personnel working on the building to move the toilet back to the original placement, and the toilet and plumbing were moved back to the original placement per Rieger's instruction. However, Invista refuses to accept or acknowledge Hunter Site Services's invoice for additional time and materials expended in complying with Invista's project manager's instructions and changes. Invista's Rieger has inexplicably denied the charges because the toilet ended up in the same place it was originally installed, contending that Invista should not have to pay for the labor and materials furnished to move the toilet back and forth.

- demoed sinks, toilets, stalls and replaced all items in Rm. 104;
- demoed sinks, toilets, stalls and replaced all items in Rm. 105; and
- installed ADA ramps and handrails.

92. Hunter Site Services has paid in full its subcontractors, including SMWP for all SMWP's subcontracted civilwork relating to B531.

C. Invista continues to refuse to pay Hunter Site Services for all labor, equipment, and materials supplied to Invista even after accepting Hunter Site Services's work and declining Hunter Site Services's invitation to review all invoiced amounts.

93. Invista has accepted all work that Hunter Site Services has performed for Invista on the ADN, HMD, AA C-12, and B531 buildings. The buildings were successfully commissioned, and they have been in operation and fully utilized by Invista since approximately the summer of 2014.

94. Hunter Site Services has submitted invoices to Invista that reflect itemized statements detailing charges for labor and equipment including hours, dates, hourly charge for the labor or equipment, and materials charges with invoices and other materials supporting the amount Invista owes Hunter Site Services, which is at least $1,168,485.26.

95. Hunter Site Services has paid for all material and labor relating to the Victoria Site projects, including paying all subcontractors and vendors

for the work at issue. Thus, the subcontractors and vendors for Invista's Victoria Site project have not filed any liens against Invista's property.

96. The itemized statements, invoices, and other documents Hunter Site Services submitted to Invista also show that Hunter Site Services fully paid all subcontractors and vendors for the Victoria Site projects.

97. Invista has refused to pay Hunter Site Services for the work and services for which payment is sought in this lawsuit, including amounts that Hunter Site Services has paid to its subcontractors and vendors.

98. Hunter Site Services invited Invista personnel to "sit down", review, and discuss the itemized statements, invoices, and other materials supporting Hunter Site Services claim for at least $1,168,485.26. At Invista's request, Hunter Site Services even went to great time and expense to organize materials for review by Invista. However, despite Hunter Site Services's efforts, Invista has declined to meet with Hunter Site Services to review and discuss the amounts owed to attempt to resolve the dispute outside of litigation.

99. Invista has enjoyed the use and benefits of Hunter Site Services's work and material expended on Invista's behalf and Invista must pay for the work and material provided.

100. Because of Invista's refusal to pay, Hunter Site Services sent a demand for payment more than 30 days before the filing of this lawsuit, but

Invista continues to refuse to pay the amounts rightfully due and owing to Hunter Site Services. Invista's failure to pay has necessitated the hiring of the undersigned counsel by Hunter Site Services to pursue the amounts owed by Invista.

IV.
RELIEF REQUESTED

Breach of Contract

101. Hunter Site Services re-alleges and incorporates by reference paragraphs one (1) through 100 as if set forth herein.

102. The Service Agreement, Installation Proposals, Installation PO, Civil Work Proposal, Civil Work PO, B531 Proposal, and B531 PO represent valid contracts between Hunter Site Services and Invista (collectively referred to as the "Contracts").

103. Hunter Site Services has fully performed under the Contracts, and all conditions precedent have been satisfied or have otherwise occurred.

104. Invista has breached the Contracts by failing to pay Hunter Site Services for its work under the Contracts, including labor, services, equipment, or materials requested by, provided to, and accepted by Invista relating to the Contracts and all three Victoria Site projects.

105. Hunter Site Services has been damaged as a result of Invista's breach in the amount of at least $1,168,485.26, which Hunter expected and

relied on Invista to pay under the Contracts. Additionally, the Contracts require Invista to pay interest at a rate of twelve percent (12%) per annum on the unpaid balance.

V.
ALTERNATIVE RELIEF REQUESTED

Quantum Meruit

106. In addition, and in the alternative, should further pleading be necessary, Hunter Site Services re-alleges and incorporates by reference paragraphs one (1) through 100 as if set forth herein.

107. Hunter Site Services undertook to furnish and did furnish valuable labor, services, equipment, or materials to Invista on all three Victoria Site projects in the amount of at least $1,168,485.26, which amount remains unpaid.

108. Invista accepted the labor, services, equipment, or materials furnished by Hunter Site Services.

109. The labor, services, equipment, or materials were furnished to and accepted by Invista under such circumstances that Invista was reasonably notified that Hunter Site Services, in performing, expected to be paid by Invista.

110. Hunter Site Services seeks reimbursement of the reasonable value of the labor, services, equipment, or materials furnished to and accepted by Invista in the amount of at least $1,168,485.26.

VI.
RELIEF REQUESTED

Attorneys' Fees

111. Hunter Site Services re-alleges and incorporates by reference paragraphs 1 through 110 as if set forth herein.

112. The Contracts are subject to the laws of Texas. The Contracts were negotiated and entered into in the State of Texas and all work was done and all materials were furnished in the State of Texas.

113. Invista has not tendered payment for the just amount owed despite Hunter Site Services's demand for payment. As a result, Hunter Site Services was required to take legal action and obtain legal counsel to bring this suit to collect the amounts due and owing to Hunter Site Services.

114. Therefore, Hunter Site Services is entitled to recover its reasonable and necessary attorneys' fees, pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

VII.
JURY DEMAND

115. Plaintiff Hunter Site Services requests a trial by Jury for this matter.

PRAYER

Hunter Site Services, L.L.C., respectfully requests that Defendant INVISTA S.à r.l. be cited to appear and answer and that on the trial of this matter Hunter Site Services have a judgment against INVISTA S.à r.l. for the following:

1. All actual damages as set forth herein which are at least $1,168,485.26;

2. Attorney's fees and costs;

3. Pre-judgment at the highest legal rate to which Hunter Site Services;

4. Post-judgment interest at the highest legal rates to which Hunter Site Services may be justly entitled;

5. All other costs of Court; and

6. Such other and further relief to which Hunter Site Services may be justly entitled.

Dated: November 24, 2015.

Respectfully submitted,

/s/ David A. Pluchinsky

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